



State of Utah

GARY R. HERBERT  
*Governor*

GREG BELL  
*Lieutenant Governor*

Department of  
Environmental Quality

Amanda Smith  
*Executive Director*

DIVISION OF AIR QUALITY  
Bryce C. Bird  
*Director*

DAQ-040-13

MEMORANDUM

**TO:** Air Quality Board

**THROUGH:** Bryce C. Bird, Executive Secretary

**FROM:** Jay Morris, Minor Source Compliance Section Manager

**DATE:** May 24, 2013

**SUBJECT:** Amico-Klemp Company Recommended Approval.

In November 2012, Division staff calculated a penalty for Amico-Klemp Company of \$90,200 to resolve repeat violations of the Utah Air Quality Rules at their industrial grating manufacturing facility in Orem. In accordance with Utah Code Ann. § 19-2-104(3)(b)(i), the Board must review a settlement negotiated by the director in accordance with Subsection 19-2-107 (2)(b)(viii) that requires a civil penalty of \$25,000 or more; and approve or disapprove the settlement. This rule became effective on May 8, 2012.

In an inadvertent oversight by Division staff, we failed to bring the Amico-Klemp Company early settlement proposal to the Board for your review in accordance with the above rule. The company has since agreed to the terms of the proposal and has signed the early settlement agreement. The Amico-Klemp Company settlement was the first and only settlement in 2012 that included a recommended penalty over \$25,000. Thus, this settlement is the only settlement that was not brought before the Board under the newly-effective Utah Code Ann. §19-2-104(3)(b)(i).

Staff would like to provide the details of the settlement to the Board at this time. This was a repeat violation of a 12-month rolling volatile organic compound (VOC) emission limit at Amico-Klemp Company. The Division cited the company for exceeding the limit in 2009. During the 2012 compliance inspection, the company reported they had exceeded the VOC limit significantly for over 39 straight rolling 12-month periods.

The Division offered Amico-Klemp Company an early settlement offer for \$90,200. Under the terms of the settlement agreement, of the \$90,200 penalty amount, \$45,100 will be paid in cash in eighteen equal monthly payments of \$2,505.56. The remaining \$45,100 of the stipulated penalty will be deferred, but payable if Amico-Klemp Company, at any of its operations within the State, violates the provisions of this Agreement, the Utah Air Conservation Act, the Air Quality Rules, or Orders issued by the Director within

two years following the date of this Agreement. If Amico-Klemp Company does not violate this Agreement, the Act, Rules, or Orders within the next two years, the remaining \$45,100 of the stipulated penalty will be waived.

Amico-Klemp Company signed the early settlement and submitted the first payment of \$2,505.56 in April 2013. The signed early settlement agreement and penalty calculation was provided for your review in the Board packet. The Division entered into an early settlement agreement with Amico-Klemp Company in an effort to bring the facility into compliance and to avoid the time and the expense of a formal compliance process.

Recommendation: Staff recommends the Board approve and uphold the penalty amount and early settlement offer.



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Document Date 2/6/2013



DAQ-2013-002309

DAQC-142-13  
Site ID 13089(B1)

February 6, 2013

Hand Delivered

Steve Sherwood  
Amico-Klemp Company  
212 North 1330 West  
Orem, UT 84059

Dear Mr. Sherwood:

Re: Early Settlement Agreement – Amico-Klemp Company – Utah County

On October 3, 2012, the Utah Division of Air Quality (DAQ) issued a Compliance Advisory to Amico-Klemp Company. On October 19, 2012, Amico-Klemp Company responded to the Compliance Advisory. Based on the findings of the inspection and the response to the Compliance Advisory, the DAQ determined that Amico-Klemp Company is in violation of:

Condition 8 of Approval Order DAQE-AN0130890003-08, dated August 11, 2008. According to records received, Amico-Klemp Company has been out of compliance with the VOC limit every month since the previous inspection, August 19, 2009.

Section 19-2-115 of the Utah Code Annotated provides that violations of the Utah Air Conservation Act and/or any order issued thereunder may be subject to a civil penalty of up to \$10,000 per day for each violation. Based upon our civil penalty policy, we calculated a preliminary civil penalty for the above listed violations of \$90,200.00. The monetary amount of the DAQ settlement offer specified below is derived from a pre-established schedule of penalties, which takes into account, among other factors, the magnitude and severity of the violation, cooperation of the source as well as the prior history of violations. All parties we deal with, whether private, commercial, or governmental are treated similarly in the settlement process. Settlement offers are based on the evaluation of the same factors and criteria in all cases.

If you are interested in settling this violation, we are authorized to offer settlement in accordance with the DAQ Penalty Policy as follows:

1. Amico-Klemp Company agrees to pay \$45,100.00 of the \$90,200.00 stipulated penalty in cash. Monthly payments of \$2,505.56 will be paid by the first business day of each month for 18 months. The remaining \$45,100.00 of the stipulated penalty shall be deferred and payable if Amico-Klemp Company, at any of its operations within the State, violates the provisions of this Agreement, the Act, Rules, or Orders issued by the Director (Orders) within two years following

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the date of this Agreement. However, if Amico-Klemp Company, does not violate this Agreement, the Act, Rules, or Orders within the next two years, the remaining \$45,100.00 of the stipulated penalty shall be waived.

2. The DAQ retains its authority to take any enforcement actions based on any and all violations not specifically described above.
3. In the event any further violations of the Utah Air Quality Rules occur, the DAQ may consider the violation described above in assessing a penalty for the subsequent violations, in accordance with the provisions of Utah Administrative Code R307-130.
4. Entering into this settlement shall not constitute an admission of violation of the Utah Air Quality Rules, nor shall it be inferred to be such an admission in any administrative or judicial proceeding. The described violation will constitute part of the company compliance history for any purpose for which such history is relevant to the DAQ.

This letter constitutes an offer of settlement and is not a demand for payment. If the above terms are acceptable to you, please sign and return this Early Settlement Agreement and a check in the sum of \$2,505.56, made payable to the DAQ at the letterhead address within twenty (20) business days of receipt of this letter. The 17 remaining monthly payments of \$2,505.56 will be due by the first business day of each month. If a monthly payment is not paid on time, the remaining balance of the \$45,100.00 will be due by the first business day of the following month.

You may write or call to request a settlement conference with DAQ representative listed below. A conference must be scheduled within twenty (20) business days of your receipt of this Early Settlement Offer. If we do not receive a signed copy of this letter and payment or other correspondence from you within twenty (20) business days of your receipt of this letter, we will assume that you are not interested in resolving this matter as outlined above.

This Early Settlement Agreement is intended to quickly resolve the non-compliance issues listed above and requires the immediate attention of your company. Failure to resolve this matter as outlined in this letter may result in this offer being revoked and/or having this matter referred to a formal enforcement process.

If you have any additional questions regarding this matter, please contact Jay Morris at (801) 536-4079 or at [jpmorris@utah.gov](mailto:jpmorris@utah.gov).

Sincerely,



Bryce C. Bird  
Director

BCB:JPM:bp

Enclosures: Penalty Calculation and Criteria

cc: Terry Beebe, Utah County Health Department

DAQC-142-13

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Acceptance of Early Settlement Agreement

I have read the above Early Settlement Agreement and I agree to the terms and conditions thereof.

Amico-Klemp Company

Name:

Title:

<u><i>Clean O'Donoghue</i></u>	<u>4-18-13</u>	<u>205 783 6228</u>
Signature	Date	Telephone Number

# Utah Division of Air Quality General Administrative Penalty Worksheet

Amico-Klemp Company		13089		No	B		9/18/2012		Home			
Table 1: Gravity Criteria					Events	Category	Gravity Criteria (Gc)				Gravity Criteria	
							Gc 1	Gc 2	Gc 3	Gc 4	Daily Gravity	Accumulated Gravity
Citation	Description of the Violation				12	B	3	3	3	0	\$7,000	\$84,000
Condition 8 of Approval Order AN0130890003-08, dated August 11, 2008												
Exceedance of VOC limit (25 tons per rolling 12 month period)												
Gc 5 History of violations within the last five (5) years												
Date of Early Settlement/NOV		Description of Early Settlement/NOV				Category						
1/6/2010 - 9/17/2009		\$1400 cash, \$6500 SEP - CA for exceeding VOC limit				<input checked="" type="checkbox"/> Same Violation <input type="checkbox"/> Same Violation <input type="checkbox"/> Same Violation <input type="checkbox"/> Same Violation <input type="checkbox"/> Same Violation		B		\$2,000		
Total Gravity												
\$86,000												
Table 2: Adjustments												
Economic Benefit Collectable		Use the information that gives you the most correct value of benefit. This may be the BEN Model, Net Income, Tax Records, Company Records, or any other economic benefit information.										
Other		\$4200 - SEP credit from previous CA to implement an environmental management system Early Settlement Reduction (20%) -										
Total Penalty		\$90,200										

## Gravity Criteria Definitions

Gc 1. Was the violation a result of excess emissions and/or reporting?	
0	If the violation was not a result of excess emissions and/or reporting
1	If a minor reporting or other problem occurred, but no emissions were involved
2	If a reporting or other problem occurred which involved minor emissions
3	If a reporting or other problem occurred involving significant emissions
Gc 2. Did the violation appear to be willful or due to gross negligence?	
0	If the source clearly did not know that the action/inaction constituted a violation
1	If the source should have known that the action/inaction would result in a minor violation
2	If the source clearly knew that the action/inaction would result in a minor violation
3	If the source clearly knew that the action/inaction would result in a significant violation
Gc 3. Was the violator unresponsive in correcting the violation?	
0	If the source was cooperative and the violation was corrected as soon as possible
1	If the source was cooperative but the violation was corrected in a less timely manner
2	If the source was not cooperative but did correct the problem
3	If the source was not cooperative and did not attempt to correct the problem
Gc 4. Was the violation a result of improper operation or inadequate maintenance?	
0	If the source was following an acceptable O & M plan at the time the violation occurred
1	If the source was following an inadequate/incomplete O & M plan at the time the violation occurred
2	If the source did not have an O & M plan at the time the violation occurred
3	If the source did not have an O & M plan and the violation was clearly the result of improper O & M

### **R307-130. General Penalty Policy**

#### **R307-130-1. Scope.**

This policy provides guidance to the executive secretary of the Air Quality Board in negotiating with air pollution sources penalties for consent agreements to resolve non-compliance situations. It is designed to be used to determine a reasonable and appropriate penalty for the violations based on the nature and extent of the violations, consideration of the economic benefit to the sources of non-compliance, and adjustments for specific circumstances.

#### **R307-130-2. Categories.**

Violations are grouped in four general categories based on the potential for harm and the nature and extent of the violations. Penalty ranges for each category listed:

##### **Category A - \$7,000 to \$10,000 per day**

Violations with high potential for impact on public health and the environment including:

- (a) Violations of emission standards and limitations of NESHAP
- (b) Emissions contributing to non-attainment area or PSD increment exceedances.
- (c) Emissions resulting in documented public health effects and/or environmental damage.

##### **Category B \$2,000 to \$7,000 per day**

Violations of the Utah Air Conservation Act, applicable state and federal regulations, and orders to include:

- (a) Significant levels of emissions resulting from violations of emission limitations or other regulations not within Category A
- (b) Substantial non-compliance with monitoring requirements.
- (c) Significant violations of approval orders, compliance orders, and consent agreements not within Category A
- (d) Significant and/or knowing violations of "notice of intent" and other notification requirements.
- (e) Violations of reporting requirements

##### **Category C Up to \$2,000 per day**

Minor violations of the Utah Air Conservation Act, applicable state and federal regulations, and orders having no significant public health or environmental impact to include:

- (a) Reporting violations
- (b) Minor violations of monitoring requirements, orders and agreements.
- (c) Minor violations of emission limitations or other regulatory requirements

##### **Category D Up to \$299.00**

Violations of specific provisions of which are considered minor to include:

- (a) Violations of automobile emission standards and requirements.
- (b) Violation of wood-burning regulations by private individuals
- (c) Open burning violations by private individuals.